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No. 99-1786

In the

Supreme Court of the United States

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY, EARTH SYSTEMS, INC., AND THE HEALTH AND WELFARE PLAN FOR EMPLOYEES AND DEPENDENTS OF EARTH SYSTEMS, INC.,

Petitioners,

v.

JANETTE KNUDSON AND ERIC KNUDSON,

Respondents.

On Petition for a Writ of *Certiorari* to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE* CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND IN SUPPORT OF PETITION FOR WRIT OF *CERTIORARI*

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MOTION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

Central States, Southeast and Southwest Areas Health and Welfare Fund ("Welfare Fund"), pursuant to Supreme Court Rule 37, respectfully moves this Honorable Supreme Court of the United States of America to grant it leave to file a brief *amicus curiae* in support of the Petition for Writ of *Certiorari* filed by Great-West Life & Annuity Insurance Company, Earth Systems, Inc., and Health and Welfare Plan for Employees and Dependents of Earth Systems, Inc. (collectively, "Petitioners"). The Welfare Fund submits its brief *amicus curiae* together with this motion. In support, the Welfare Fund states:

1. Petitioners have consented to the filing of the Welfare Fund's brief *amicus curiae*. The Welfare Fund has been unable to obtain the consent of Respondents Janette Knudson and Eric Knudson to the filing of the Welfare Fund's brief *amicus curiae*. Petitioners' letter of consent accompanies this motion for filing with the Clerk of this Court.

2. The Welfare Fund is a Taft-Hartley trust and an employee benefit plan as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1002(1). *See Central States, Southeast & Southwest Areas Pension Fund v. Central Transport, Inc.*, 472 U.S. 559, 561-62 (1985), *reh'g denied*, 473 U.S. 926 (1985). Welfare Fund beneficiaries are teamsters and dependents of teamsters (collectively, "Beneficiaries") from local unions throughout the country who negotiate collective bargaining agreements with their employers. The employers pay contributions to the Welfare Fund to fund benefits for Beneficiaries.

3. The Welfare Fund provides medical, hospital, dental, disability, vision and life benefits to more than three hundred thousand Beneficiaries who reside in thirty-six states. The Welfare Fund is self-funded and not-for-profit. Like Petitioners, the Welfare Fund has implemented a subrogation program which it actively enforces in all jurisdictions where its Beneficiaries reside.

4. The issue in this case is whether an employee benefit plan regulated by ERISA can sue in federal court to obtain reimbursement of paid medical benefits from the proceeds of its beneficiary's personal injury settlement. The resolution of this issue depends upon whether such an action seeks equitable relief under Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3).

5. Pending before this Court are separate petitions for writs of *certiorari* in the following cases which involve the above issue: a) the case at bar; b) *Reynolds Metals Co. v. Ellis*, 202 F.3d 1246 (9th Cir. 2000), *petition for cert. filed*, No. 99-1787 (U.S. May 10, 2000) (the "*Ellis* Case"); and c) *Cement Masons Health and Welfare Trust Fund for Northern California v. Stone*, 197 F.3d 1003 (9th Cir. 1999), *petition for cert. filed*, No. 99-1403 (U.S. Feb. 22, 2000) (the "*Stone* Case"). Each of these cases involves a decision of the Ninth Circuit holding that the above relief is not equitable relief and that the federal court therefore lacks jurisdiction to hear such matter under ERISA.

6. On May 30, 2000, this Court allowed the motions of the Welfare Fund and other employee benefit plans to file briefs *amicus curiae* in support of the Petition for a Writ of *Certiorari* in the *Stone* Case. On that same date, this

Court invited the Solicitor General to file a brief in the *Stone* Case. The Welfare Fund is also filing its Motion for Leave to File a Brief *Amicus Curiae* in the *Ellis* Case together with the filing of this motion.

7. The Welfare Fund seeks leave to file its brief *amicus curiae* to bring to the attention of the Court relevant matters not raised by Petitioners, *viz.*, the effect which the Ninth Circuit's decision will have on large employee benefit plans, such as the Welfare Fund, which operate in many states. For these employee benefit plans, the decision of the Ninth Circuit will cause the exact harm which Congress sought to prevent in enacting ERISA. The decisions of the Ninth Circuit in this case, the *Ellis* Case, and the *Stone* Case impact large, multi-state employee benefit plans in the same way. For that reason, the Welfare Fund's briefs in each case are essentially the same.

8. In enacting ERISA, Congress recognized the importance of employee benefit plans, the problems which conflicting state and local regulation could cause for such plans, and the need for exclusive federal regulation of such plans to ensure uniformity in enforcement of plan terms. This Honorable Court has, on many occasions, noted these laudable goals of ERISA. *See Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 99 (1983) (quoting 120 Cong. Rec. 29933 (1974)); *FMC Corp. v. Holliday*, 498 U.S. 52, 60 (1990).

9. The Ninth Circuit's decision not only creates a split in the Circuits, but also directs plans to state court as the exclusive forum for enforcing the terms of the plan and redressing violations of the terms of the plan. For these

reasons, that decision will create the exact patchwork enforcement of plan terms which Congress sought to avoid in enacting ERISA.

10. As discussed in the brief *amicus curiae*, because ERISA preempts state laws, 29 U.S.C. § 1144(a), and provides plan fiduciaries with access to federal district courts which have exclusive jurisdiction in actions to enforce plan terms and redress violations of plan terms, 29 U.S.C. §§ 1132(a)(3) and 1132(e), directing fiduciaries to state courts for such actions may result in no remedy at all. Moreover, that direction invites state courts to apply a wide range of varying state laws which diminish or eliminate subrogation rights in different ways from state to state.

11. Finally, subrogation results in significant cost-savings for the Welfare Fund. Since its inception in 1984, the Welfare Fund's subrogation program has achieved direct reimbursements and savings of approximately $62.0 million. Because the decision of the Ninth Circuit will result in the diminishment of subrogation recoveries and savings, that decision will lead to the inevitable reduction in benefits for Beneficiaries—a result which further detracts from ERISA's goals as described in *Shaw*, 463 U.S. at 99, and *FMC*, 498 U.S. at 60.

For each of the above reasons, the Central States, Southeast and Southwest Areas Health and Welfare Fund requests this Honorable Court to grant it leave to file the Welfare Fund's brief *amicus curiae*.

Respectfully submitted,

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BRIEF OF *AMICUS CURIAE*

I. THE INTEREST OF THE *AMICUS CURIAE*

Central States, Southeast and Southwest Areas Health and Welfare Fund ("Welfare Fund") is an employee benefit plan as defined in Section 3(1) of the Employee Retirement and Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1002(1). *See Central States, Southeast & Southwest Areas Pension Fund v. Central Transport, Inc.*, 472 U.S. 559, 561-62 (1985), *reh'g denied*, 473 U.S. 926 (1985).[1] Welfare Fund beneficiaries are teamsters and dependents of teamsters (collectively, "Beneficiaries") from local unions throughout the country who negotiate collective bargaining agreements with their employers. These collective bargaining agreements require employers to pay a certain level of contributions to the Welfare Fund in return for a set benefit package offered by the Welfare Fund for that particular contribution rate. Each contributing employer executes a participation agreement with the Welfare Fund agreeing, among other things, to pay the required contributions and to abide by all rules and regulations set by the Welfare Fund Trustees who administer the Welfare Fund. Established under the Taft-Hartley Act, the Welfare Fund has ten trustees—five appointed by contributing employers and five elected by the unions whose members are Beneficiaries. *See* 29 U.S.C. § 186.

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[1] As provided in United States Supreme Court Rule 37.6, the Welfare Fund states that no counsel for any party authored any part of this brief, and that no person other than *amicus curiae*, its members, or its counsel made any monetary contribution to the preparation or submission of the brief.

The Welfare Fund provides medical, hospital, dental, vision, life and disability benefits to more than three hundred thousand Beneficiaries who reside in thirty-six states. The Welfare Fund is self-funded and pays benefits directly from the contributions of participating employers. The Welfare Fund is not-for-profit, and its assets are used exclusively to provide benefits for Beneficiaries or to defray the reasonable costs of administering the benefit plan. *See* 29 U.S.C. § 1104(a)(1)(A).

ERISA and the law of trusts require plan fiduciaries to manage the assets of the Welfare Fund prudently and in the best interests of all beneficiaries. 29 U.S.C. § 1104(a)(1)(B). To comply with these requirements, the Welfare Fund has implemented cost-containment measures including the promulgation of a subrogation provision. This provision requires Beneficiaries who receive recoveries in accident cases to, among other things, reimburse the plan from any recovery in the full amount of accident-related benefits advanced by the Welfare Fund. Since its inception in 1984, the Welfare Fund's subrogation program has achieved recoveries and savings totaling approximately $62.0 million.

Since benefit levels are based on actuarial assumptions which assume a certain level of subrogation recoveries, such recoveries are necessary to provide assets sufficient to fund the benefit levels stated in the various benefit plans offered by the Welfare Fund. Like other large multiemployer plans where contribution rates are set pursuant to collective bargaining agreements and a participation agreement, the Welfare Fund cannot unilaterally increase contribution rates. Thus, if subrogation recoveries are reduced, benefits provided to Beneficiaries will be correspondingly reduced.

The Welfare Fund will be materially and adversely affected by the decision of the Ninth Circuit Court of Appeals in this case. That decision conflicts with decisions of the Seventh, Eighth and Eleventh Circuits which permit the enforcement of subrogation and reimbursement rights in federal courts. *See Administrative Comm. v. Gauf*, 188 F.3d 767 (7th Cir. 1999); *Blue Cross & Blue Shield of Ala. v. Sanders*, 138 F.3d 1347 (11th Cir. 1998); *Southern Council of Indus. Workers v. Ford*, 83 F.3d 966 (8th Cir. 1996). If the Ninth Circuit's decision is allowed to stand, state courts will be the exclusive forum for enforcement of the Welfare Fund's subrogation rights in that Circuit. As a result, and as discussed herein, the Welfare Fund will be able to enforce in piecemeal fashion only, or not at all, its subrogation rights in the Ninth Circuit and other jurisdictions which follow the Ninth Circuit's lead. In contrast, the Welfare Fund will be able to fully enforce its subrogation rights in the Seventh, Eighth and Eleventh Circuits and other jurisdictions. Contrary to the intent of Congress when it passed ERISA, the above split in the Circuits will lead to non-uniform enforcement of the Plan and impose a costly administrative burden on the Plan because the Welfare Fund enforces its subrogation rights in many jurisdictions. In addition, allowing the Ninth Circuit's decision to stand will lead to a reduction of subrogation recoveries and the consequent loss of benefits for Plan Beneficiaries.

Moreover, the decision of the Ninth Circuit will have implications for many other employee benefit plans.

Many multiemployer plans and plans of single employers with nationwide facilities operate in many different states. The Ninth Circuit's decision will cause for these plans the same reduction in subrogation recoveries, increase in administration expenses, and patchwork enforcement of plan terms. The administrative difficulty and added expense caused by such a piecemeal scheme of federal and state regulation of multistate employee benefit plans which Congress rejected when it passed ERISA will thus become a reality for many ERISA plans. *See Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1, 9-11 (1987); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 107-08 (1983).

II. SUMMARY OF THE ARGUMENT

The Welfare Fund seeks to bring to the Court's attention matters not focused on by Petitioners. When it passed ERISA into law, Congress recognized the national interest in employee benefit plans, and the need for exclusive federal regulation of such plans to ensure uniformity in enforcement of plan terms and to eliminate conflicting state and local regulation of such plans. For large multistate plans like the Welfare Fund, the Ninth Circuit's decision makes these laudable goals of ERISA unattainable, creates added administrative expense, and results in reduced subrogation recoveries and consequent reduced benefits for Beneficiaries.

For several reasons, the decision of the Ninth Circuit causes the very harm which ERISA was designed to prevent. First, the Ninth Circuit's decision conflicts with decisions of the Seventh, Eighth and Eleventh Circuits,

causing the unequal, non-uniform enforcement of the Welfare Fund's subrogation provision. Second, the requirement that multistate plans sue in state court to enforce subrogation rights invites state courts to apply a panoply of state laws which diminish or eliminate subrogation rights, further fostering piecemeal enforcement of plan terms.

Moreover, the decision of the Ninth Circuit prevents plan fiduciaries from enforcing the terms of the plan and redressing violations of plan terms as required by ERISA. *See* 29 U.S.C. § 1132(a)(3). In fulfilling these obligations, Congress authorized plan fiduciaries to sue exclusively in federal court to obtain equitable relief under ERISA. 29 U.S.C. §§ 1132(a)(3), 1132(e). In denying the Trustees relief in federal court, the forum which has exclusive jurisdiction over these matters, the Ninth Circuit's decision effectively bars plan fiduciaries from enforcing plan terms as required by ERISA.

III. ARGUMENT: REASONS FOR GRANTING THE WRIT

A. The Decision of the Court of Appeals for the Ninth Circuit Prevents Uniform Administration of Multistate Employee Benefit Plans and Thus Frustrates the Primary Purpose of ERISA.

1. In Promulgating ERISA, Congress Recognized the Importance of Employee Benefit Plans and the Need for Exclusive Federal Regulation of Such Plans to Ensure Uniformity in Enforcement of the Terms of the Plan.

When Congress enacted ERISA in 1974, it recognized that employee benefit plans involved the national public

interest and stressed the importance of the uniform federal regulation of such plans. Congress set forth its findings and declaration of policy in Section 2 of ERISA, which, in part, provides:

> The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations.

29 U.S.C. § 1001(a). As recognized by this Court, ERISA's legislative sponsors emphasized the necessity for uniform federal regulation of not only the substantive provisions, but also of enforcement provisions applicable to such plans:

> "It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which have the force or effect of law."

Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 99 (1983) (quoting 120 Cong. Rec. 29933 (1974));[2] *see also FMC Corp. v. Holliday*, 498 U.S. 52, 60 (1990).

In order to permit plan Trustees to structure plan provisions uniformly for all plan participants, Congress enacted ERISA's preemption provisions. *See* 29 U.S.C. § 1144. To further this same purpose, Congress enacted Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), ERISA's enforcement provision, allowing plans to sue to obtain equitable relief to enforce plan terms and redress violations of plan terms. To ensure uniform enforcement of plan terms, Congress provided that federal district courts shall have exclusive jurisdiction in the above actions. *See* 29 U.S.C. § 1132(e).

Congress rejected amendments to ERISA which would have required ERISA plans to comply with multiple and potentially conflicting state laws which would raise the possibility of "endless litigation" on issues of whether state regulation impinged upon federal regulation. *Shaw*, 463 U.S. at 99 n.20. Thus, after a period of monitoring by the Congressional Pension Task Force and hearings by a House Subcommittee, a report evaluating ERISA's preemption provisions was issued, stating that "'the

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[2] Senator Javits echoed these comments, stating: "'Although the desirability of further regulation—at either the State or Federal level—undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required—but for certain exceptions—the displacement of State action in the field of private employee benefit programs.'" *Shaw*, 463 U.S. at 99 n.20 (quoting 120 Cong. Rec. 29942 (1974)).

Federal interest and the need for national uniformity are so great that enforcement of state regulation should be precluded.'" *Id.* (quoting H.R. Rep. No. 1785, 94th Cong., 2d Sess., at 47 (1977)).

This Court has also on several occasions noted the necessity for exclusive federal regulation of employee benefit plans. In *Shaw*, the Court considered the question of whether New York's Disability Benefits Law was preempted by ERISA. In finding preemption, this Court noted that the obligation of the plans to comply with "the varied and perhaps conflicting" requirements of particular state fair employment laws would make nationwide administration of plans more difficult. 463 U.S. at 105 n.25. The Court emphasized that this sort of interference with the administration of employee benefit plans was exactly what ERISA's comprehensive preemption of state law was designed to minimize. *Id.*

In *Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1 (1987), this Court recognized that requiring an employer to adopt different payment formulae for employees inside and outside the State would subject the employer to precisely the burden that ERISA preemption was intended to eliminate. *Id.* at 10.[3] This court recognized the difficulties which these state rules imposed on plan administrators and stated:

> An employer that makes a commitment systematically to pay certain benefits undertakes a host of obligations, such as determining the eligibility of claimants, calculating benefit levels, making disbursements, monitoring the availability of funds for benefit payments, and keeping appropriate records in order to comply with applicable reporting requirements. The most efficient way to meet these responsibilities is to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits. Such a system is difficult to achieve, however, if a benefit plan is subject to differing regulatory requirements in differing States. A plan would be required to keep certain records in some States but not in others; to make certain benefits available in some States but not in others; to process claims in a certain way in some States but not in others; and to comply with certain fiduciary standards in some States but not in others.

Id. at 9.

ERISA's uniform enforcement mechanism complements ERISA's administrative scheme. In *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987), this Court again confirmed that ERISA was designed to achieve uniformity of deci-

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[3] Since the laws and regulations applicable to health care benefits vary widely from state to state, the disruptive effect of state regulation is compounded for employee benefit plans, such as the Welfare Fund, which have employees in more than one state. Benefit plans which operate in many states often choose to self-fund benefit payments rather than purchase insurance to cover such benefits. Because state laws vary dramatically, purchasing insurance for plans which operate in (continued...)

[3] (...continued)
many states is inefficient, inequitable and increasingly expensive. It was for this reason that Congress passed the preemption clause of ERISA, 29 U.S.C. § 1144. *See Fort Halifax*, 482 U.S. at 10; *see also FMC Corp. v. Holliday*, 498 U.S. 52 (1990).

sion to assist fiduciaries "'to predict the legality of proposed actions without the necessity of reference to varying state laws.'" *Id.* at 56 (quoting H.R. Rep. No. 533, 93rd Cong., 1st Sess., at 12 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4650). This Court noted ERISA's expectation that federal courts would develop federal common law:

> The expectations that a federal common law of rights and obligations under ERISA-regulated plans would develop, indeed, the entire comparison of ERISA's § 502(a) to § 301 of the LMRA, would make little sense if the remedies available to ERISA participants and beneficiaries under § 502(a) could be supplemented or supplanted by varying state laws.

Pilot Life, 481 U.S. at 56.

This Court also noted in enacting ERISA, Congress realized that employers establishing and maintaining employee benefit plans are faced with the task of coordinating complex administrative activities:

> A patchwork scheme of regulation would introduce considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them. Pre-emption ensures that the administrative practices of a benefit plan will be governed by only a single set of regulations.

Fort Halifax, 482 U.S. 1, 11 (1987) (citing H.R. Rep. No. 533, 93rd Cong., 1st Sess., at 12 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4650).

2. The Decision of the Ninth Circuit Fosters the Very Harm Which Congress Sought to Prevent in Enacting ERISA.

The Ninth Circuit's decision will create the exact patchwork scheme of regulation and enforcement which Congress sought to avoid in enacting ERISA. *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142 (1990). Most obviously, the split in the Circuits which the Ninth Circuit's decision creates will result in the unequal, non-uniform enforcement of the Welfare Fund's subrogation provision. First, denying ERISA plans the right to enforce subrogation rights in federal court under Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), may indeed result in the complete abrogation of such rights. Courts in a number of jurisdictions have held that federal courts have exclusive jurisdiction in enforcing such rights and have dismissed lawsuits seeking to enforce these rights. *See*, e.g., *Descant v. Administrators of the Tulane Educ. Fund*, 706 So. 2d 618 (La. Ct. App. 1998); *Jefferson-Pilot Life Ins. Co. v. Krafka*, 57 Cal. Rptr.2d 723 (Cal. Ct. App. 1996). In fact, ERISA itself provides that federal district courts shall have exclusive jurisdiction over enforcement of plan terms. 29 U.S.C. § 1132(e).

Second, the requirement that multistate plans sue in state court to enforce their subrogation provisions invites state courts to apply local laws which diminish subrogation rights and prevents the uniform enforcement of plan terms. *See Ingersoll-Rand*, 498 U.S. at 142. For example, the laws of some states prohibit the enforcement of subrogation rights against uninsured motorist recoveries, recoveries by minors, or recoveries which do not

make a plan participant whole. In other states, the amount of the recovery may be reduced by an award of *pro rata* attorney's fees for a participant's attorney under the common fund doctrine.[4]

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[4] Federal courts are often forced to decide whether to apply state laws that would forbid or limit an ERISA plan's subrogation rights. When confronted with this issue, most federal courts have held that ERISA preempts such laws or that the written language of the plan overrides such laws. *See, e.g.*, *FMC*, 498 U.S. 52 (1990) (ERISA preempts state automobile insurance anti-subrogation law); *Community Ins. Co. v. Richardson*, 172 F.3d 872 (6th Cir. 1999) (ERISA preempts Ohio statute prohibiting reimbursement of medical claims from municipalities); *Electro-Mechanical Corp. v. Ogan*, 9 F.3d 445 (6th Cir. 1993) (ERISA preempts Tennessee statute prohibiting subrogation of health care costs in malpractice cases); *Hampton Indus., Inc. v. Sparrow*, 981 F.2d 726 (4th Cir. 1992) (ERISA preempts North Carolina subrogation statute limiting a self-funded ERISA plan's recovery from third party settlement funds); *Davis v. Line Constr. Benefit Fund*, 589 F. Supp. 146 (W.D. Mo. 1984) (ERISA preempts State law preventing subrogation of an otherwise unassignable personal claim).

Courts have also considered application of the common fund doctrine to ERISA plans. *See, e.g., Walker v. Wal-Mart Stores, Inc.*, 159 F.3d 938, 940 (5th Cir. 1998); *United McGill Corp. v. Stinnett*, 154 F.3d 168, 173 (4th Cir. 1998); *Bollman Hat Co. v. Root*, 112 F.3d 113, 118 (3rd Cir. 1997), *cert. denied*, 522 U.S. 952 (1997); *Health Cost Controls v. Isbell*, 139 F.3d 1070, 1072 (6th Cir. 1997); *Ryan v. Federal Express Corp.*, 78 F.3d 123 (3rd Cir. 1996). In *Waller v. Hormel Foods Corp.*, 120 F.3d 138, 141 (8th Cir. 1997), the court ruled that whether ERISA preempts the common fund doctrine depends on the language of the benefit plan. In *Cutting v. Jerome Foods, Inc.*, 993 F.2d 1293, 1296 (7th Cir. 1993), *cert. denied*, 510 U.S. 916 (1993), and (continued...)

The decision of the Ninth Circuit will create huge burdens on multistate plans and force such plans to rely on myriad rules to enforce subrogation and reimbursement rights. Uniformity in the application of plan terms will cease. The end result of the Ninth Circuit's decision will be the exact patchwork administration of employee benefit plans that Congress sought to avoid in enacting ERISA. *See FMC Corp.*, 463 U.S. at 60; *Fort Halifax*, 482 U.S. at 10-11; *Shaw*, 463 U.S. at 105, n.25.

B. If Allowed to Stand, the Ninth Circuit's Decision Will Diminish a Valuable Cost-Saving Mechanism for Self-Funded Plans.

Many of the cost-containment measures implemented by employee benefit plans transfer actual costs to beneficiaries or restrict the type, length or choice of medical care. Unlike such cost-containment measures, a subrogation provision merely prevents the duplication of benefits by the plan where other coverage exists for a particular injury or illness. In other words, the participant does not recover twice for accident-related medical damages, and the responsibility for the medical care is shifted to the party causing the injury or to the specific-risk insurer who has specifically assumed the kind of risk leading to the injury. Subrogation not only shifts the

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[4] (...continued)
Fields v. Farmers Ins. Co. Inc., 18 F.3d 831, 835-36 (10th Cir. 1994), courts held that the terms of the plan override contrary State laws related to subrogation in Wisconsin and Oklahoma, respectively. *See also* footnote 6, *infra*, pp. 15-16.

costs of medical care to the responsible party, but also constitutes a valuable cost-savings device. Since the inception of the Welfare Fund's subrogation program, the Welfare Fund has achieved recoveries and subrogation savings totaling approximately $62.0 million.

Under the Ninth Circuit's ruling, employee benefit plans will be ushered to state court to enforce their subrogation rights. As discussed previously, some state courts have held that the federal courts have exclusive jurisdiction over such matters and will, therefore, not entertain such actions. Other states may indeed apply laws which prohibit or diminish the enforcement of subrogation rights. (*See* footnote 4, *supra*, pp. 12-13.) The inevitable result of the Ninth Circuit's ruling will be a loss in subrogation recoveries for the Welfare Fund and other plans, and the consequent loss of benefits for plan participants.[5]

[5] The Ninth Circuit's decision could lead benefit plans to reconsider their policy of advancing payment for medical bills related to injuries sustained in accidents. If benefit plans cannot enforce their subrogation rights in certain states, and in order to avoid having one employer subsidize the benefits of another employer's employees, plans could add plan provisions to exclude from coverage claims related to accidents in those states where the plan's subrogation provision could not be enforced. Although compensating for lost subrogation recoveries, this added layer of administration would delay payment of a beneficiary's benefits, increase the costs of administering the plan, and lead to the hodge-podge administration of plans which ERISA condemned.

C. The Decision of the Ninth Circuit Prevents the Trustees From Administering the Plan in Accordance with ERISA's Mandate.

ERISA requires that every employee benefit plan be established pursuant to a written instrument and that named fiduciaries control and manage the operation and administration of the Plan. 29 U.S.C. § 1102(a)(1). Congress bestowed upon fiduciaries the power and authority to accomplish these objectives by enacting ERISA's enforcement mechanism. Section 502(e) of ERISA, 29 U.S.C. § 1132(e), affords fiduciaries access to federal courts to enforce plan terms and to redress violations of plan terms. The Ninth Circuit's decision, which denies access to federal court, prevents fiduciaries from administering the Plan as required by ERISA.

Subrogation is not a simple contractual matter between an insured and its insurer where state issues predominate. Subrogation involves enforcing the written terms of the plan under the enforcement mechanism of ERISA. In many instances, the enforcement of subrogation rights by a self-funded employee benefit plan involves the interpretation of a plan's precise subrogation provision—a function best left to the discretion of plan Trustees.[6] Because

[6] For example, plan fiduciaries must decide whether the written terms of the plan include recoveries from tortfeasors as well as their insurers or recoveries from uninsured motorist coverage. *See Health Cost Controls v. Washington*, 187 F.3d 703, 711-12 (7th Cir. 1999), *cert. denied*, 120 S. Ct. 979 (2000); *Wendy's Int'l, Inc. v. Karsko*, 94 F.3d 1010, 1013 (6th Cir. 1996); *Sunbeam-Oster Co., Inc. v. Whitehurst*, 102 F.3d 1368, 1378 (5th Cir. 1996). Another question of interpretation arises when the

(continued...)

ERISA considerations permeate the enforcement of Plan terms such as subrogation, Congress legislated that federal district courts have exclusive jurisdiction to enforce Plan terms and redress violations of those terms. These are core ERISA issues best left, as Congress intended, to the federal courts. Contrary to the Ninth Circuit's position, the equitable relief which Congress set forth in ERISA is sufficient to accomplish these objectives.

IV. CONCLUSION

The Ninth Circuit's decision is directly at odds with the goals of Congress in enacting ERISA. If the decision of the Ninth Circuit is permitted to stand, employee benefit plans will be subjected to non-uniform regulations and enforcement. The consequent increased administrative expenses and decreased subrogation recoveries will result in a loss of benefits for plan beneficiaries. Plan fiduciaries will be denied the uniform enforcement mechanism needed to enforce plan terms and redress violations of plan terms. For the reasons stated above, Central States, Southeast and Southwest Areas Health and Welfare

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[6] (...continued)
written terms of the plan set the priority of allocations between the subrogee and subrogor. *See Cagle v. Bruner*, 112 F.3d 1510, 1520-22 (11th Cir. 1997), *reh'g denied*, 124 F.3d 223 (11th Cir. 1997); *Sunbeam-Oster Co.*, 102 F.3d at 1373-76; *Cutting v. Jerome Foods, Inc.*, 993 F.2d 1293 (7th Cir. 1993), *cert. denied*, 510 U.S. 916 (1993). *See also Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989) (arbitrary and capricious standard applied when plan gives fiduciary discretionary authority to construe terms of plan).

Fund respectively requests this Honorable Court to grant the Petition for Writ of *Certiorari*.

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